STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LAGUNA SALADA EDUCATION ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. SF-CE-1643
v.	)	PERB Decision No. 1103
LAGUNA SALADA UNION SCHOOL DISTRICT,	)	May 11, 1995
Respondent.	)	

Appearances: California Teachers Association by A. Eugene Huguenin, Jr., Attorney, for Laguna Salada Education Association, CTA/NEA; Littler, Mendelson, Fastiff, Tichy & Mathiason by Michael J. Tonsing, Attorney, for Laguna Salada Union School District.

Before Blair, Chair; Garcia and Caffrey, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Laguna Salada Education Association, CTA/NEA (Association) to the proposed decision of a PERB administrative law judge (ALJ). The ALJ dismissed the unfair practice charge and complaint in which the Association alleged that the Laguna Salada Union School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when in

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:

June 1993 it unilaterally implemented a 1.76 percent salary schedule reduction effective July 1, 1992, and reduced the June 1993 paychecks of employees represented by the Association by 17.6 percent.

The Board has reviewed the entire record in this case, including the proposed decision, the joint stipulation and the filings of the parties. The Board hereby reverses the proposed decision of the ALJ and finds that the District's action violated EERA section 3543.5(a), (b) and (c).

BACKGROUND

On July 22, 1993, the Association filed an unfair practice charge which included numerous allegations of EERA violations related to the District's unilateral implementation of terms and conditions of employment on June 15, 1993. On September 6, 1994, the parties filed a settlement agreement with PERB and a stipulation of facts and issues. In it, the parties agreed to amend the complaint and submit a single issue involving the

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> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

unilaterally-imposed retroactive salary reduction. The parties' stipulation of facts and issues states, in pertinent part:

> 1. Charging Party is an employee organization within the meaning of Government Code section 3540.1(d) and is the exclusive representative, as defined in section 3540.l(e), of an appropriate unit of employees.
>
> 2. Respondent is a public school employer within the meaning of Government Code section 3540.1(k)
>
> 3. During the period from April 15, 1992 through November 12, 1992, Respondent and Charging Party were meeting and negotiating pursuant to Government Code section 3543.3.
>
> 4. On April 15, 1992 the District made its initial bargaining proposal that the 1991 - 1992 salary schedule remain at the status quo.
>
> 5. On November 7, 1992 the District claimed that the District's financial situation had worsened, and proposed to reduce the 1991/92 salary schedule by 1.76%, to become effective July 1, 1992. The claim that the District's financial condition had worsened was disputed by the Charging Party.
>
> 6. On November 12, 1992, PERB determined the existence of an impasse. A factfinding panel was assigned by PERB on February 25, 1993 and the majority recommendation was issued on June 4, 1993. For the purpose of this charge, neither party will raise the propriety of the factfinding process as an issue.
>
> 7. Up until June 15, 1993 the District continued to issue full pay warrants to bargaining unit members at the 1991 - 1992 salary schedule level.
>
> 8. The Respondent, on or about June 15, 1993, unilaterally implemented a 1.76% salary schedule reduction, retroactive to the beginning of the 1992 - 1993 school year by

> reducing the June 1993 warrants of charging party unit members by 17.6%.
>
> The parties also STIPULATE that the issue to be decided by this case is whether the District violated EERA Section 3543.5(a), (b), (c) on or about June 15, 1993, by unilaterally implementing a 1.76% salary schedule reduction, retroactive to the beginning of the 1992 - 1993 school year by reducing the June 1993 warrants of charging party unit members by 17.6%.
>
> The parties further STIPULATE that the Charging Party shall not request, or shall PERB order, "make whole" relief in this case; provided that, all other remedies customarily available to PERB shall be available in this case.

The parties filed briefs in October 1994 and on November 23, 1994, the ALJ issued his proposed decision in which he found that the District's action did not violate EERA, and dismissed the Association's unfair practice charge and the resulting complaint.

POSITIONS OF THE PARTIES

Association Position

The Association asserts that the District's salary reduction action "is a garden-variety unlawful unilateral change" for which the District has no valid defense. The Association argues that the mere exhaustion of the EERA impasse process is insufficient to render an employer's unilateral change lawful. Any change unilaterally implemented must have been reasonably comprehended in a pre-impasse offer to the employee organization. (Modesto City Schools (1983) PERB Decision No. 291 (Modesto).)

The Association argues that it can not be concluded that

the District's November 1992 demand for a 1.76 percent salary-reduction effective July 1, 1992, reasonably comprehends the possibility of a decrease retroactive to the beginning of the 1992-93 school year, resulting in a 17.6 percent reduction to the June 1993 paychecks of employees. The Association asserts that Education Code sections 45041, 45044, 45045 and 45046 provide for mid-year salary changes to be prorated based on the number of days worked at the new salary rate.

Citing Rowland Unified School District (1994) PERB Decision No. 1053 (Rowland), the Association asserts that an employer may not unilaterally implement a provision of a last, best and final offer which imposes a waiver of the exclusive representative's statutory right to bargain in good faith. The Association argues that a unilaterally-implemented retroactive salary reduction has a similar effect of undermining the EERA goal of promoting good faith bargaining. Since an employer must maintain the status quo of terms and conditions of employment during the bargaining and impasse process, the subsequent retroactive implementation of a salary reduction following completion of impasse allows the employer to do that which it cannot lawfully do during bargaining, simply by waiting. The Association asserts that this conduct thwarts EERA's good faith bargaining goal.

Rather than working a hardship on the employer, the Association asserts that the inability to unilaterally implement a salary reduction retroactively serves as an inducement to pursue agreement in collective bargaining, consistent with the

goals of EERA. To allow the District to retroactively adjust salaries:

> . . . would eviscerate the duty of an employer to maintain the status quo during bargaining, and remove all incentive for an employer to reach agreement with the union. Moreover, it would confiscate the union's only bargaining chip--the statutory right to the current terms and conditions of employment for the duration of the negotiations and impasse resolution proceedings.

The Association asserts that a retroactive unilateral salary reduction can lead to disastrous practical results if a substantial salary reduction is retroactively implemented and withheld from employees' paychecks in its entirety following an extended impasse.

The Association cites National Labor Relations Board (NLRB) cases[2] which it argues demonstrate that an employer may not gain economic advantage for the period of negotiations in which it was required to maintain the status quo, by changing after impasse the terms and conditions of employment applicable in the pre-impasse period.

The Association also argues that, prior to EERA, California case law held that salaries of certificated school district employees became "vested" as of July 1 of each year. Subsequent to EERA, a negotiated agreement may supersede the salary level vested as of July 1. In this case, however, since the parties

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[2]Columbia Portland Cement Co. (1989) 294 NLRB 410 [133 LRRM 1009]; Shelter Island (1988) 290 NLRB 246 [129 LRRM 1148]; San Diego Princess (1988) 290 NLRB 253 [31 LRRM 1268]; Dependable Maintenance Co. (1985) 276 NLRB 27.

reached no agreement, the Association argues that the District was bound to pay the vested salaries it paid at the beginning of the 1992-93 school year for the entire year, and could not unilaterally implement a reduction retroactively. (A.B.C. Federation of Teachers v. A.B.C. Unified Sch. Dist. (1977) 75 Cal.App.3d 332, 337-339 [142 Cal.Rptr. 111].)

District Position

The District agrees that unilateral implementation of a salary reduction during negotiations or prior to the completion of impasse procedures would constitute an EERA violation. As demonstrated by the parties' stipulation, the District argues that neither of these events occurred in this case. The District asserts that it fulfilled its EERA obligations to negotiate in good faith, and to participate in good faith in the impasse process, and then took the action available to it. It unilaterally implemented the salary reduction effective July 1, 1992, which was included in the District's final pre-impasse offer to the Association. (Modesto: Charter Oak Unified School District (1991) PERB Decision No. 873 (Charter Oak); Rowland.) Since the duty to negotiate had been fulfilled and no further obligation existed, the District asserts that its action could not have violated EERA section 3543.5(c).

The District cites various Education Code sections to assert that the salaries of certificated school district employees are contemplated on an annual rather than monthly basis. Therefore, it can be reasonably inferred, in the absence of evidence to the

contrary, that the parties throughout negotiations were bargaining over the annual salary to be paid in the 1992-93 school year. Accordingly, the monthly paychecks received in 1992-93 prior to the unilateral implementation of the reduction retroactively, were "tentative advances against a baseline figure yet to be determined" rather than "an irrevocable commitment to a base wage rate."

The District asserts that the parties' stipulation conclusively establishes that the salary reduction was "to become effective July 1, 1992" and, therefore, reasonably comprehends the implementation of that reduction retroactive to the beginning of the 1992-93 year, and the reduction in the 1992-93 annual salary, following completion of impasse procedures.

The District argues that denying it the ability to unilaterally implement a salary reduction retroactively after completion of impasse procedures would "violate public policy" by forcing the employer to bargain with less flexibility in order to reach impasse more quickly, and by contributing to the possible insolvency of districts facing financial crises. The District also distinguishes the NLRB and pre-EERA cases cited by the Association, arguing that they do not address the employer's authority under EERA to unilaterally implement terms and conditions of employment included in pre-impasse proposals, following completion of the statutory impasse process.

DISCUSSION

Included in the parties' joint stipulation is a statement of the issue to be decided in this case:

> . . . whether the District violated EERA Section 3543.5(a), (b), (c) on or about June 15, 1993, by unilaterally implementing a 1.76% salary schedule reduction, retroactive to the beginning of the 1992-93 school year by reducing the June 1993 warrants of charging party unit members by 17.6%.

It is a fundamental rule of collective bargaining that an employer must maintain certain terms and conditions of employment, including wages and benefits, following expiration of a collective bargaining agreement during the parties' negotiations over a successor agreement. An employer's unilateral change in these terms and conditions of employment is a per se violation of the statutory duty to bargain in good faith. (Pajaro Valley Unified School District (1978) PERB Decision No. 51; San Mateo County Community College District (1979) PERB Decision No. 94; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177]; (State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S; Department of Personnel Administration v. Superior Court (1992) 5 Cal.App.4th 155 [6 Cal.Rptr.2d 714].)

Under California law, public sector employers may lawfully make unilateral changes in terms and conditions of employment only after completing statutory impasse procedures. (Campbell Municipal Employees Assn. v. City of Campbell (1982) 131 Cal.App.3d. 416, 422 [182 Cal.Rptr.46].) Under the EERA,

exhaustion of the statutory impasse procedures occurs only when the employer considers the factfinder's report in good faith, and the report fails to provide a basis for settlement. (Modesto.) Thus, an employer's change affecting a mandatory subject of bargaining prior to the exhaustion of impasse procedures, including consideration of the factfinder's report, is an unlawful unilateral change. (Moreno Valley Unified School District (1982) PERB Decision No. 206.)

However, an employer may implement proposals previously offered to the union once the employer exhausts the statutory impasse procedures. As stated by the Board in Modesto:

> . . . impasse under EERA is identical to impasse under the NLRA; either party may decline further requests to bargain, and the employer may implement policies reasonably comprehended within previous offers made and negotiated between the parties.

The term "reasonably comprehended" excludes those changes better than the last offer and also any changes which the parties did not discuss during negotiations which are less than the status quo. (Charter Oak.)

In the instant case, it is undisputed that the employer maintained certain terms and conditions of employment during negotiations over a successor agreement. Specifically, the District maintained the 1991-92 salary schedule as the status quo during 1992-93 negotiations. It is also undisputed that EERA's statutory impasse process was completed, and neither party contests the propriety of that process. The District continued

to maintain the 1991-92 salary schedule as the status quo through the completion of the impasse process.

On or about June 15, 1993, the District unilaterally implemented a 1.76 percent salary schedule reduction. Since its salary proposal was "to become effective July 1, 1992," the District calculated the cumulative value of the reduction from that date until the point of unilateral implementation, and reduced June 1993 paychecks, the final paychecks of 1992-93, by 17.6 percent. Applying the precedent cited above, the key to resolution of this matter is the determination of whether the November 1992 proposal to reduce salaries by 1.76 percent, effective July 1, 1992, reasonably comprehends the actions taken by the District on June 15, 1993. Those actions were the reduction of the salary schedule by 1.76 percent, and the reduction of June 1993 paychecks by 17.6 percent, the cumulative value of the reduction from July 1992 to June 1993.

The subject of wages is expressly within the scope of representation described in EERA section 3543.2(a). It is also well established that the methodology used in making wage payments, how and when employees are paid, is a matter within the scope of representation which an employer may not change unilaterally, even when the level of compensation is not at issue. The Board, for example, has held that an employer acted unlawfully by unilaterally eliminating an employee option for a June lump sum payment of July, August and September salaries. (Calexico Unified School District (1982) PERB Decision No. 265;

Brawley Union High School District (1982) PERB Decision No. 266.) Similarly, the NLRB has held that a change of employee wage base from a weekly salary to an hourly rate is a negotiable matter. (General Motors Corporation (1944) 59 NLRB 1143 [15 LRRM 170].)

It has also been established in cases from other jurisdictions that the methodology used in making adjustments to employee wages is a negotiable matter, even when the amount of the adjustment is unquestioned. (Levitt v. Board of Collective Bargaining (1992) 79 NY.2d 120 [25 NYPERB 7514]; NFL Players Association v. NLRB (8th Cir. 1974) 503 F.2d 12 [87 LRRM 2118].) However, PERB has not specifically addressed whether the methodology used in making adjustments to wages, how and when employee wages are changed, is a matter within the scope of representation under EERA. The Board will find a subject negotiable, even though it is not specifically enumerated in EERA section 3543.2, if: (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment; (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and (3) the obligation to negotiate would not specifically abridge the employer's freedom to exercise those managerial prerogatives, including matters of fundamental policy, essential to the achievement of the employer's mission. (Anaheim Union High School District (1981) PERB Decision No. 177 (Anaheim); test approved in San Mateo City School Dist, v. Public

Employment Relations Board (1983) 33 Cal.3d 850 [191 Cal.Rptr. 800].)

The methodology used by an employer to adjust the wages of employees is a subject clearly related to wages, because it affects how and when employee salaries will be changed. This matter is of mutual concern to employees and management, and lends itself to the mediatory influence of collective bargaining. And similar to the methodology of making wage payments, there is nothing in the subject of the methodology of adjusting wages which abridges an employer's freedom to exercise those managerial prerogatives essential to achieving its mission. Therefore, pursuant to Anaheim, the methodology used to make adjustments in employee wages is a negotiable subject, just as is the level to which wages are to be adjusted.[3]

In considering the District's salary proposal as described in the parties' joint stipulation, the Board must determine if

[3]Typically, wage adjustments occur in accordance with the established methodology for making wage payments. For example, a 5 percent salary increase for employees paid on a monthly basis will generally be reflected as a 5 percent increase in each monthly paycheck. However, the authority to implement an adjustment in employee wages does not carry with it the unilateral authority to determine how and when to make the adjustment. For example, authority to implement a 5 percent salary increase for employees paid on a monthly basis does not permit the employer to decide unilaterally to increase every other monthly paycheck by 10 percent; or to pay the increase annually in a lump sum by adjusting the twelfth paycheck following implementation of the increase by 60 percent. The methodology used in adjusting the wages is a negotiable subject.

it reasonably comprehends the level of wages implemented by the District, and the methodology the District utilized in adjusting wages to that level.

The level of wages is clearly stated within the District's salary proposal. The parties' joint stipulation states that *on* November 7, 1992, the District "proposed to reduce the 1991-92 salary schedule by 1.76% to become effective July 1, 1992." The District argues that the reference to the July 1, 1992, effective date leads to the reasonable inference that the parties were negotiating over a 1.76 percent reduction in the annual salaries to be paid during 1992-93. The District cites Education Code provisions which it argues demonstrate that teacher salaries are considered on an annual rather than monthly or other basis. Since the salary reduction proposal was not made until November 1992, well after the beginning of the 1992-93 year, the District argues that it is clear from the proposal that a reduction larger than 1.76 percent would have to be made to remaining 1992-93 paychecks in order to achieve the annual value of the 1.76 percent reduction by the end of the year. Thus, since unilateral implementation did not occur until the final month of the year, June 1993, it was reasonably comprehended within the proposal that the methodology to be used in implementing the salary reduction would be to reduce June paychecks by the entire annual amount, 17.6 percent.

The Board finds the brief description of the salary proposal contained in the parties' joint stipulation insufficient to

conclude that it reasonably comprehends the methodology for adjusting employee wages which was implemented by the District. The mere statement in November 1992 of the July 1, 1992, effective date of the salary reduction does not reasonably comprehend that the entire annual amount must be deducted from employee paychecks before the end of the 1992-93 year. The proposal described in the joint stipulation simply does not indicate that with each passing month larger amounts would be deducted from paychecks remaining in 1992-93 to achieve the total annual reduction no later than June 1993.[4]

It is apparent that the wage adjustment methodology used by the District is not reasonably comprehended in the District's proposal, because it is unclear from the proposal what action the District would have taken had implementation occurred in any month prior or subsequent to June 1993. Would implementation in May 1993 have resulted in May and June paychecks each being reduced by 8.8 percent? Would implementation in October 1993 have resulted in that month's paycheck being reduced by some amount higher than 17.6 percent? The answers to these questions

[4]At the time the District introduced its last pre-impasse salary proposal in November 1992, several months of the 1992-93 year had already passed. Consistent with the District's argument, it was aware, therefore, that amounts considerably larger than 1.76% would have to be deducted from remaining paychecks to achieve the annual reduction for 1992-93 no later than June 1993. Yet nothing in the parties' joint stipulation indicates that the methodology which the District apparently planned to utilize in implementing its proposal, was communicated to or negotiated with the Association.

are not reasonably comprehended within the salary proposal described in the parties' joint stipulation.

The District points to various Education Code sections as demonstrating that the salaries of its certificated employees are contemplated on an annual basis, arguing, therefore, that the entire value of the wage reduction for 1992-93 had to be withheld from wages during that year. However, the cited sections do not mandate that adjustments to annual salaries must be made no later than June 30 each year. Nor do these sections suggest a methodology to be used in adjusting the level of employee compensation, or address the negotiability under EERA of a wage adjustment methodology.

In summary, the methodology used in making adjustments to employee wages is a negotiable subject, just as is the wage level itself. In this case, the District implemented a wage reduction by deducting a lump sum equal to the annual value of the reduction from a single paycheck. The Board concludes that this methodology is not addressed, and clearly not reasonably comprehended, within the District's November 1992 salary proposal as it is described in the parties' joint stipulation. Therefore, the District was not free to implement that methodology following completion of EERA's statutory impasse procedure. When it did so, the District committed an unlawful, unilateral change in violation of EERA section 3543.5(c). By this same conduct, the District denied the Association its right to represent its members in violation of EERA section 3543.5(b), and interfered

with the rights of individual employees in violation of EERA section 3543.5(a).

Finally, the Board notes that by this decision it does not reach the issue of whether an employer can lawfully implement terms and conditions of employment retroactively, following completion of EERA's statutory impasse procedure. Therefore, the Board finds it unnecessary to address the extensive arguments presented by the parties relating to this issue.

REMEDY

EERA section 3541.5(c) gives the Board broad remedial powers, including the authority to issue cease and desist orders and to require affirmative action effectuating the policies of the EERA. In a long line of cases, the Board has ordered a make whole remedy for employees affected by a unilateral change. (Rio Hondo Community College District (1983) PERB Decision No. 292; Oakland Unified School District (1980) PERB Decision No. 126; Compton Unified School District (1989) PERB Decision No. 784.) Such remedies have been approved by the courts. (San Diego Adult Educators v. Public Employment Relations Bd. (1990) 223 Cal.App.3d. 1124, 1137 [273 Cal.Rptr. 53].)

Included in the parties' joint stipulation is the following:

> The parties further STIPULATE that the Charging Party shall not request, or shall PERB order, "make whole" relief in this case; provided that, all other remedies customarily available to PERB shall be available in this case.

The Board's statutory remedial powers cannot be limited or constrained by stipulation of the parties. Therefore, this section of the stipulation has no effect on PERB's authority.

However, the main purpose of EERA section 3541.5(c) is to empower the Board to take what actions it deems necessary to effectuate the policies of EERA. A primary purpose of EERA is to enhance stability in employer-employee relations and promote the collective resolution of issues and disputes. Since the parties appear to have reached agreement with regard to the issue of any make whole remedy in this case, the Board concludes that it is appropriate to give deference to that agreement. Therefore, the Board will not include a make whole order as part of its remedy in this case.

In order to remedy the unfair practice of the District and to effectuate the purposes of EERA, it is appropriate to order the District to cease and desist from unlawfully implementing terms and conditions of employment which were not reasonably comprehended in the District's last, best and final offer.

It is also appropriate that the District be required to post a notice incorporating the terms of this order. The notice must be signed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting this notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates

the purposes of EERA that employees be informed of the resolution of the controversy, and announces the employer's readiness to comply with the ordered remedy. (See Placerville Union School District (1978) PERB Decision No. 69; Pandol & Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584]; NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].)

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to the Educational Employment Relations Act (EERA), Government Code section 3541.5(c), it is hereby ordered that the Laguna Salada Union School District (District), its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unlawfully implementing terms and conditions of employment which were not reasonably comprehended in the District's last, best and final offer.

2. Denying the Laguna Salada Education Association, CTA/NEA (Association) the right to represent its members in their employment relations with the District.

3. Denying the bargaining unit members the right to be represented by the Association in their employment relations with the District.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF EERA.

1. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees are customarily placed, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the Notice is not reduced in size, defaced, altered or covered with any other material.

2. Written notification of the actions taken to comply with this Order shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance with the director's instructions.

Chair Blair joined in this Decision.

Member Garcia's dissent begins on page 21.

GARCIA, Member, dissenting: The Public Employment Relations Board (PERB) administrative law judge's (ALJ) analysis of this case was correct and I would affirm his proposed decision dismissing the charge.

Based on the stipulated facts, the impasse process was complete in June 1993. Under the key cases identified by the majority opinion that govern this issue,[1] the Laguna Salada Union School District (District) was free, after impasse was established, to implement the salary reduction of its last proposal. Since it is well known to all involved that school districts operate on an annual budget cycle, it is not unreasonable to presume that the District would recoup the entire projected savings by June 30 of the current year. After impasse, there was only one pay period left in which to spread out the proposed cut.

Problems With "Reasonably Comprehended" Standard

With respect to unilateral implementation, in the cases cited above, the main inquiry was whether the terms implemented were consistent with those of the District's last proposal; the "reasonably comprehended" test is an additional tool to be used when there is uncertainty as to whether what was implemented was within the boundaries of the last best offer.

The majority opinion places too much importance on the phrase "reasonably comprehended" and raises it to the level of a

[1]Modesto City Schools (1983) PERB Decision No. 291 and Charter Oak Unified School District (1991) PERB Decision No. 873 (Charter Oak).

prerequisite which the District must establish to avoid a violation. Using the "reasonably comprehended" test as the majority does effectively imposes an additional requirement that a specific plan of implementation be identifiable from the terms of the last proposal; otherwise, the last, best and final offer cannot be implemented without violation. That position is contrary to the view taken in Charter Oak.

To achieve a salary reduction, there are many possible timing-and-methodology variations an employer could use to implement a change in pay. The case law on unilateral change does not require specificity.

Burden of Proof

The majority view herein creates a new test and shifts the burden of proof to the District. The burden of proof in unfair practice cases before PERB is set forth in PERB Regulation 32178[2] as follows:

> The charging party shall prove the complaint by a preponderance of the evidence in order to prevail.

Under that regulation, the Association has the burden of proof and must show by a preponderance of the evidence that the District's post-impasse implementation of the pay reduction was inconsistent with the terms of its last proposal. The ALJ was not convinced, and the record supports his conclusion.

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[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. SF-CE-1643, Laguna Salada Education Association, CTA/NEA v. Laguna Salada Union School District, in which all parties had the right to participate, it has been found that the Laguna Salada Union School District (District) violated the Educational Employment Relations Act, Government Code section 3543.5(a), (b) and (c).

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Unlawfully implementing terms and conditions of employment which were not reasonably comprehended in the District's last, best and final offer.

2. Denying the Laguna Salada Education Association, CTA/NEA (Association) the right to represent its members in their employment relations with the District.

3. Denying the bargaining unit members the right to be represented by the Association in their employment relations with the District.

Dated: _____ LAGUNA SALADA UNION SCHOOL DISTRICT

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.